



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-16-00575-CR

Ciarra **PLEASANT**,
Appellant

v.

The **STATE** of Texas,
Appellee

From the County Court at Law No. 14, Bexar County, Texas
Trial Court No. 387732
The Honorable Susan Skinner, Judge Presiding

Opinion by: Rebeca C. Martinez, Justice

Sitting: Marialyn Barnard, Justice
Rebeca C. Martinez, Justice
Irene Rios, Justice

Delivered and Filed: September 6, 2017

AFFIRMED

Ciarra Pleasant appeals her conviction of the offense of animal cruelty. We affirm the trial court's judgment.

BACKGROUND

The landlord of Pleasant's apartment noticed fifteen pairs of cat eyes looking at her and a heavy smell of urine when she was serving an eviction notice. A few days later, the landlord returned with Animal Control Services and entered the apartment. The officers found twenty-eight cats crowded into just a few cat carriers stacked in the bathroom. The carriers were full of feces

and urine, and the bathroom was 90 degrees. Several dead cats were found in the freezer. Pleasant relinquished ownership of the live cats to Animal Control Services. However, all the cats ultimately had to be euthanized due to their poor physical health. Pleasant was charged with two counts of Cruelty to Non-Livestock Animals. TEX. PENAL CODE ANN. § 42.092(b)(3), (5) (West 2016). A jury found her guilty on both counts and Pleasant received one year of community supervision.

ANALYSIS

In her sole issue on appeal, Pleasant asserts the record shows that venire member No. 7 was biased against her as a matter of law due to the nature of the charge; therefore, the trial court had a duty to exclude her from the venire even though defense counsel withdrew his challenge for cause. Pleasant contends she was denied her constitutional right to a fair and impartial jury because venire member No. 7 served on the jury. The State replies that the issue was not preserved for review.

The voir dire record reflects that venire member No. 7 raised her card in response to the trial court's inquiry whether anyone felt they could not be fair simply due to the nature of the case as an animal cruelty case. Pleasant's counsel challenged venire member No. 7 for cause based on her answer indicating a bias against the type of case. During further questioning by both the State and defense counsel, venire member No. 7 expressed her love for animals and indicated she would render a "pretty harsh" verdict if the defendant was "pretty cruel" to an animal. Venire member No. 7 also responded that she would wait to hear the evidence before deciding whether Pleasant was guilty, stating, "Well, yeah. You can't, you know, convict somebody, when you don't know if they did it or not." At the conclusion of the questioning, defense counsel renewed his challenge for cause. The State objected to the challenge, arguing that venire member No. 7 was rehabilitated because she indicated she would wait to hear all the evidence and would follow the law. The trial

court initially stated its intent to deny Pleasant's challenge for cause, but, after more discussion, expressed its intent to "grant it in an abundance of caution." At that point, the following exchange occurred:

DEFENSE COUNSEL: Your honor, on —

TRIAL COURT: I've granted your challenge.

DEFENSE COUNSEL: I will withdraw it. She did rehabilitate herself.

TRIAL COURT: Okay. You just — okay.

DEFENSE COUNSEL: After you — It's up to you on the record. I'm just saying. That's why I didn't object to anything they were saying.

TRIAL COURT: But you renewed your challenge, when I asked was there — "Is there a challenge for cause on either side?" And, you said "Renew our challenge for cause."

DEFENSE COUNSEL: Yes, based on that, and then based on their rational[e] — I'm just —

TRIAL COURT: Okay. So, what are you telling the Court? You're asking for a challenge for cause or you are not?

DEFENSE COUNSEL: I will withdraw my challenge for cause.

TRIAL COURT: You are withdrawing your challenge for cause?

DEFENSE COUNSEL: Yes, Your Honor. Based on the statements, again, that I wasn't aware of during voir dire, those statements, if she did say that, she did rehabilitate herself.

TRIAL COURT: So, you are not asking the Court for a challenge for cause?

DEFENSE COUNSEL: No, Your Honor.

After all the challenges and peremptory strikes were made, venire member No. 7 was seated and served on the jury.

Article 35.16(a) of the Code of Criminal Procedure lists the grounds available for a challenge for cause, and expressly states that a challenge based on bias or prejudice against the

defendant may be waived. TEX. CODE CRIM. PROC. ANN. art. 35.16(a) (West 2006) (stating that challenges based on a potential juror's prior conviction, current indictment, and insanity may not be waived, but "[a]ll other grounds for challenge may be waived by the party . . . in whose favor such grounds of challenge exist"). Therefore, apart from those three exceptions, the failure to make a timely objection to a juror's qualifications under article 35.16 waives the right to challenge those qualifications on appeal. *Mayo v. State*, 4 S.W.3d 9, 12 (Tex. Crim. App. 1999) (holding that such qualifications are waivable in a criminal case); *Vera v. State*, 496 S.W.3d 293, 295 (Tex. App.—San Antonio 2016, pet. ref'd) (same). Here, the record plainly shows that Pleasant withdrew her objection to venire member No. 7 on the ground of bias or prejudice, and therefore waived her right to raise disqualification based on bias or prejudice on appeal. *See Mayo*, 4 S.W.3d at 12; *Vera*, 496 S.W.3d at 295; *see also Boulware v. State*, 542 S.W.2d 677, 682-83 (Tex. Crim. App. 1976) (holding that constitutional ground based on improper exclusion of venire member is waived by failure to object); *Broxton v. State*, 909 S.W.2d 912, 918 (Tex. Crim. App. 1995) (even constitutional errors may be waived by failure to object at trial). Even if Pleasant had preserved the issue for review, we disagree that the record establishes venire member No. 7 was biased as a matter of law. *See Anderson v. State*, 633 S.W.2d 851, 854 (Tex. Crim. App. [Panel Op.] 1982) (discussing instances that show a prospective juror is biased as a matter of law and therefore must be excused *when challenged*, even if the juror states he or she can set aside the bias).

Based on the foregoing analysis, we affirm the trial court's judgment.

Rebeca C. Martinez, Justice

DO NOT PUBLISH